

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL E. BASKEY

Appeal No. 95-2571
Application 08/245,053¹

ON BRIEF

Before JERRY SMITH, FLEMING and CARMICHAEL, ***Administrative Patent Judges.***

CARMICHAEL, ***Administrative Patent Judge.***

DECISION ON APPEAL

¹ Application for patent filed May 17, 1994. According to appellant, this application is a continuation of Application 07/722,720 filed June 27, 1991.

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This is an appeal from the final rejection of Claims 5-24, which constitute all the claims remaining in the application.

Claim 5 reads as follows:

5. A method of resynchronizing first and second nodes of a communications network following recovery from a failure at the first node, one of said nodes transmitting messages to the other of said nodes over a first route between said nodes in accordance with status information regarding messages previously transmitted over said route between said nodes, said method comprising the steps of:

 sending a request from said first node to said second node over a second route between said nodes for said status information regarding said messages previously transmitted over said first route;

 in response to said request, sending said status information from said second node to said first node over said second route; and

 resuming message transmissions between said nodes over said first route in accordance with said status information sent to said first node over said second route.

The Examiner's Answer cites the following prior art:

Morten et al. (Morten) 1991	5,021,949	Jun. 4,
Motles 1992	5,095,444	Mar. 10,
Brightwell 1993	5,265,103	Nov. 23,

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OPINION

Claims 5-12, 14-21 and 23-24 stand rejected under 35 U.S.C. § 103 as unpatentable over Brightwell in view of Motles. Claims 13 and 22 stand rejected under 35 U.S.C. § 103 as unpatentable over Brightwell in view of Motles and further in view of Morten.

We reverse for the reasons given by Appellants, amplified as follows.

The examiner's statement of the rejection does not address all of the claim limitations. In particular, it does not address the penultimate limitation that the resumed message transmission takes place "over said **first** route." For this reason alone, we would have to reverse.

Even after this recitation was argued by appellant in the Appeal Brief, the examiner did not directly address it. In fact, the examiner truncates Claim 5 so as to exclude the recitation. Examiner's Answer at 7.

The examiner contends generally that Brightwell "suggests the use of the alternate route, col. 6, lines 19-22." Examiner's Answer at 8. We are uncertain what the examiner means by "the use of the alternate route." In any

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event, the cited passage from Brightwell states that "the system may switch to an alternative network to retransmit the messages." Column 6, lines 19-22. That is the opposite of the claimed invention, in which an alternative network is used to exchange only status information and the system then switches back to the original route to resume message transmission.

The mere fact that the prior art may be modified in the manner suggested by the examiner does not make the modification obvious unless the prior art suggested the desirability of the

modification. ***In re Fritch***, 972 F.2d 1260, 1266 n.14, 23 USPQ2d 1780, 1783-84 n.14 (Fed. Cir. 1992). In the present case, the examiner does not identify how the prior art suggested the desirability of modifying Brightwell to use an alternative path to exchange only status information about the original path and then switch back to the original route to resume message transmission as claimed.

The deficiency in the examiner's reliance on Brightwell is not remedied by the examiner's application of

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Motles or Morten. Because the examiner has not stated a ***prima facie*** case of obviousness, we will not sustain the rejections.

CONCLUSION

The rejections are not sustained.

REVERSED

JERRY SMITH)	
Administrative Patent Judge)	
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)	
MICHAEL R. FLEMING)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
JAMES T. CARMICHAEL)	
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